



County of San Diego

DEPARTMENT OF PUBLIC WORKS

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PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.

February 20, 2007

County of San Diego, Department of Parks and Recreation
5201 Ruffin Road, Suite P
San Diego, CA 92123

DRAFT DECISION OF THE DIRECTOR Habitat Loss Permit

This Habitat Loss Permit cannot be relied upon as authorization for the clearing, grading or removal of any vegetation until 1) a valid Grading Permit, Clearing and Grading Permit, or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal, and 2) all of the requirements as specified within the "Conditions of Approval" section of this permit have been satisfied.

APPLICATION NUMBER: HLP XX-XXX

ASSOCIATED PERMIT(S): None

NAME OF APPLICANT: County of San Diego

DESCRIPTION/LOCATION OF LOSS:

The proposed project will allow the temporary removal of approximately 0.149 acre and the permanent removal of 0.008 acre of habitat as shown on the attached Habitat Loss Exhibit for the construction of a new nature center at the San Elijo Lagoon County Park and Ecological Reserve. The project will have outdoor improvements, which include a large covered assembly area, an observation deck, parking lot upgrades, and park entry improvements. A trail is proposed behind the nature center to provide access to an elevator to the second story. The new center will replace the existing San Elijo Lagoon visitor center, which is located approximately 580 meters (1,902 feet) west of I-5 at 2710 Manchester Avenue, on the northern shore of the lagoon. The project site is located on the USGS Encinitas Quadrangle, Section 27 Township 13 South, Range 4 West.

In 2005, protocol surveys for the presence or absence of endangered, threatened, or rare plant or animal species or their habitats were conducted within the project site for the following species: coastal California gnatcatcher (*Polioptila californica californica*), least Bell's vireo (*Vireo bellii pusillus*), and southwestern willow fly catcher (*Empidonax traillii extimus*). In addition, focused field surveys were conducted for the light-footed clapper rail (*Rallus longirostris levipes*). A family of coastal California gnatcatchers was observed in the planted coastal sage habitat approximately 20 feet southwest of the existing visitor center. Gnatcatchers were observed at this location during all five surveys. It was concluded that the site did not contain habitat to support the least Bell's vireo and the southwestern willow flycatcher, however both species could use the area during migration. There is a low to moderate potential for the light-footed clapper rail to occur on-site; however, a light-footed clapper rail pair was detected during the biological surveys (Konecny Biological Services, 2005) roughly 750 feet from the project site.

The proposed project will impact coastal sage scrub habitat on site, as listed in Table 1. The coastal sage scrub is considered to be of Intermediate Quality as determined by the criteria established under the Natural Community Conservation Planning (NCCP) Logic Flow Chart. Mitigation ratios and on- and off-site mitigation acreages are described below and listed in Table 1. Permanent impacts to 0.008 acre of coastal sage scrub will be mitigated at a ratio of 2:1 and will result in the mitigation of 0.011 acre of coastal sage scrub habitat on-site within the San Elijo Lagoon Ecological Reserve and 0.005 acres off-site at the Solana Hills site. For location and description of the Solana Hills off-site mitigation site, see the attached *Maintenance, Monitoring, and Success Criteria for the Solana Hills Mitigation Site for the San Elijo Lagoon Nature Center Project*. Temporary impacts to habitat along the western side of the existing visitor center will result from construction activities. All temporary impacts (0.149 acre) to coastal sage scrub habitat will be revegetated at a ratio of 1:1 and restored following the completion of construction. Therefore, all impacts associated with the development of the San Elijo Lagoon County Park and Ecological Reserve property will be mitigated to a level below significance. The proposed project is in conformance with all standards and guidelines outlined in the NCCP Process Guidelines.

Table 1. Habitat, Impacts, and Mitigation

Habitat	Existing (acres)	Temporary Impacts (acres)*	Permanent Impacts (acres)	Mitigation Ratio	Total On-Site and Off-Site Mitigation (acres)
Coastal Sage Scrub	2.57	0.149	0.008	2:1*	0.016

* Areas experiencing temporary impacts will be revegetated and restored at a 1:1 ratio.

DECISION:

The Director of Planning and Land Use has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) concur with the Director's approval, by either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFG, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

This Habitat Loss Permit allows for the loss of the above-described Coastal Sage Scrub (CSS) habitat for a period of one calendar year commencing the day concurrence is given by both the USFWS and CDF&G. If the loss of habitat, as authorized by this Habitat Loss Permit, has not occurred within this one-year period, the Habitat Loss Permit and the authorization for the loss of CSS habitat expires.

Use and reliance upon this Habitat Loss Permit cannot occur until all of the requirements as specified within the "Conditions of Approval" section of this permit have been satisfied.

CONDITIONS OF APPROVAL:

I. Prior to use and reliance on this HLP the applicant shall:

- A. Provide for the mitigation, conservation and habitat management of a minimum of 0.016 acres including 0.011 at the San Elijo Lagoon Ecological Reserve and 0.005 acre of coastal sage scrub at Solana Hills

Site and 0.149 acre of coastal sage scrub habitat revegetated and restored following the completion of construction.

- B. Provide the Director of Planning and Land Use evidence of a contract with a County approved biologist showing that the biologist has been retained to: supervise and verify placement of an exclusionary fence around the project site prior to construction; supervise grading activities to ensure against any additional damage to biological resources; schedule noise-intensive work outside of the gnatcatcher breeding season as reasonable and prudent; ensure sound barriers are erected at sensitive habitat locations if construction continues into the gnatcatcher breeding season; and, monitor at the completion of construction the restoration of temporarily impacted habitat to pre-construction conditions. The applicant will notify the United States Fish and Wildlife Service and the California Department of Fish and Game at least seven days prior to vegetation clearing/grubbing regarding who will coordinate with the monitoring biologist. When all grading activities have been completed, the biologist shall prepare and submit a final letter to the Director of Planning and Land Use, the United States Fish and Wildlife Service, and the California Department of Fish and Game substantiating his/her supervision of the grading activities and substantiating that grading did not impact additional areas of coastal sage scrub or other sensitive biological resources.

II. Cause to be placed on all future landscape, grading and improvement plans the following:

- A. "Restrict all brushing, clearing and/or grading such that none will be allowed within 300 feet of native or naturalized habitat during the breeding season for listed and/or migratory bird species. This is defined as occurring from February 1 to September 15. If work is to be performed during the breeding season the applicant will submit the biologist's name, address, telephone number and work schedule to the United States Fish and Wildlife Service and the California Department of Fish and Game (Wildlife Agencies) at least 30 days prior to initiating project impacts. Then, the Director of Planning and Land Use may waive this condition through written concurrence from the Wildlife Agencies, that no active bird nests are present within 300 ft (500 ft for active raptor nests) of the brushing, clearing or grading based on a field survey completed within one day of the proposed onset of ground disturbance. If an active bird nest is present, the condition may still be waived with concurrence if additional brushing, clearing and/or grading mitigation measures are implemented as specified in writing by the Wildlife Agencies."

- B. "Where landscaping is required, native plants shall be used to the greatest extent feasible. The project shall not plant, seed or otherwise introduce invasive or exotic plant species for landscaping as shown on Lists A&B of the California Exotic Plant Council's list of *Exotic Pest Plants of Greatest Ecological Concerns in California as of October 1999*."

ENVIRONMENTAL FINDINGS:
TO BE PROVIDED

FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project, and pursuant to Section 86.104 of County of San Diego Code of Regulatory Ordinances and Section 4.2.g of the CSS NCCP Process Guidelines (CDFG, November 1993):

1. The proposed habitat loss is consistent with the Interim Loss Criteria in the Conservation Guidelines and with any subregional process if established by the subregion.

a. The habitat loss does not exceed the five percent guideline.

The habitat loss does not cumulatively exceed the five percent guideline.

The proposed project will permanently impact 0.008 acres of coastal sage scrub habitat and zero pairs of gnatcatcher. Approved CSS losses as of February 6, 2007, and including this approval, for both the entire unincorporated County and the affected subregion are as follows:

Unincorporated Area Coastal Sage Scrub Cumulative Losses	
Total loss allowed under five percent guideline:	2953.30 acres
Cumulative loss of Coastal sage scrub to date:	999.05 acres
Net loss due to this project:	0.01 acres
Total cumulative loss:	999.06 acres
Remaining loss under five percent guideline:	1954.24 acres

Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

The County habitat evaluation model ranks the site as developed as the site is located where an existing nature center stands. Most of the habitat immediately

surrounding the site is also ranked as developed by the County habitat evaluation model and supports residential and commercial land uses. The site does not provide a viable connection between any high value habitats, due to its configuration and surrounding land development. Therefore, the project site is unlikely to provide connectivity between nearby areas of high habitat values and this habitat loss will not preclude connectivity.

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

The habitat loss associated with the project is small, on the order of a 100th of an acre. The site does not provide a viable connection between any high value habitats, due to its configuration and surrounding land development. For these reasons, the habitat loss will not preclude or prevent the preparation of the subregional NCCP.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

A total of 0.008 acre of coastal sage scrub habitat on the San Elijo Lagoon County Park and Ecological Reserve property will be impacted by the project. The habitat is considered of “intermediate” value, pursuant to the NCCP Logic Flow Chart. Despite this intermediate value, preservation of on-site habitat would not create a viable preserve. The site is almost completely surrounded by existing development. In addition, the on-site habitats are isolated and fragmented. Avoidance or preservation of the habitats on-site would not maintain the long-term viability of the habitat. Permanent impacts to 0.008 acre of coastal sage scrub will be mitigated at a ratio of 2:1 and will result in revegetation of 0.011 acre of coastal sage scrub habitat on-site and 0.005 acre of coastal sage scrub at the Solana Hills Site. Temporary impacts to coastal sage scrub habitat along the sides of the existing visitor center may result from construction activities. All temporary impacts (0.149 acre) to coastal sage scrub habitat will be revegetated and restored following the completion of construction.

These mitigation measures will be implemented before and after construction as coordinated with the USFWS and CDFG through the Habitat Loss Permit process. The on and off- site mitigation areas will be maintained and monitored for a total of five years or until success criteria has been met. The maintenance program will include weed control, debris removal, replanting, and reseeding, as well as other tasks as required for the site to grow and achieve the success criteria established. Revegetation of disturbed land and temporary impacts on the San Elijo Lagoon County Park and Ecological Reserve site and the Solana Hills Site and will be considered successful when the performance standards

have been met. The habitat must sustain itself for a minimum of two years in the absence of significant maintenance measures after the third year of monitoring. See attached Maintenance, Monitoring, and Success Criteria Plan for both the on and off site mitigation areas for a complete discussion on the five year performance standards. As such, the loss of coastal sage scrub will be mitigated to the maximum extent practicable for intermediate-value habitat in accordance with Section 4.3 the NCCP Process Guidelines.

Finding 2 The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

A protocol California gnatcatcher survey was performed with positive results. To avoid potential impacts to the gnatcatcher, all vegetation clearing shall occur outside the breeding season (defined as February 15 – August 31). Implementation of proposed conservation measures will avoid impacts to the gnatcatcher to the greatest extent possible while still meeting the purpose and need for the visitor center replacement project. These measures include construction of an exclusionary fence around the project site prior to construction, monitoring of the area by a qualified biologist, scheduling of noise-intensive work outside of the gnatcatcher breeding season as reasonable and prudent, sound barriers at sensitive habitat locations if construction continues into the gnatcatcher breeding season, and restoration of the habitat after construction by re-planting temporarily impacted habitat to pre-construction conditions. These measures will be implemented before and after construction as coordinated with the USFWS and CDFG through the Habitat Loss Permit process. Through this mitigation measure, the proposed construction of the San Elijo Lagoon County Park and Ecological Reserve Nature Center will not appreciably reduce the likelihood of the survival and recovery of listed species.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

The issuance of a Habitat Loss Permit by the County of San Diego, with the concurrence of the Department of Fish and Game and U.S. Fish and Wildlife Service is required prior to the clearing of any coastal sage scrub supported on the project site. A Coastal Development Permit is required from the California Coastal Commission for this project. Construction and/or land use modification will not commence until all appropriate permits have been issued. The project has been found to be in conformance with Section 86.104 of the San Diego County Code. As such, the anticipated loss will be incidental to “otherwise lawful activities”.

NCCP FLOWCHART

1. Is natural vegetation present? **Yes.**
2. Is Coastal sage scrub present? **Yes.**
3. Is Coastal sage scrub the most dense in the subregion? **No.**
4. Is the land close to high value district? **Yes.**
5. Is the land located in a corridor between higher value districts? **No.**
6. Does the land support high density of target species? **No.**

Based on the NCCP Logic Flow Chart, the quality of habitat supported on the San Elijo Lagoon County Park and Ecological Reserve project is defined as being "Intermediate Value."

MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a Mitigated Negative Declaration or an Environmental Impact Report for which findings are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied:

Conditions I. A., I. B.

NOTICE: The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

NOTIFICATION TO APPLICANT: The County of San Diego hereby notifies the applicant that State law (A.B. 3158) effective January 1, 1991, requires certain projects to pay fees for purposes of funding the California Department of Fish and Game. If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Department of Planning and Land Use, within two (2) working days of the effective date of this approval (the “effective date” being the end of the appeal period, if applicable), a certified check payable to “County Clerk” in the amount of \$1,800 for a project with a Negative Declaration, or \$2500 for a project with an Environmental Impact Report. These fees include an authorized County administrative fee of \$50. The fees may be waived for projects that are found by the Department of Planning and Land Use and the California Department of Fish and Game to have a de minimis impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Game Code, provides that no project shall be operative, vested, or final until the required filing fee is paid.

JUDICIAL REVIEW TIME LIMITATIONS: The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party’s attorney of record. A written request for the preparation of the record of the proceedings shall be filed with the Director, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, California 92123.

The foregoing decision will be approved by the Director of Planning and Land Use. A copy of this draft decision, and the documentation supporting the decision, is on file in the Department of Planning and Land Use offices at 5201 Ruffin Road, Suite B, San Diego, California.

Attachments

Habitat Loss Exhibit
USGS Map

Biological Technical Report, AMEC, 2005
Protocol Coastal California Gnatcatcher, Least Bell's Vireo, and Southwestern
Willow Flycatcher Survey Results, LSA, 2005
Results of a Focused Field Survey for the Light-footed Clapper Rail, Konecny
Biological Services, 2005
Maintenance, Monitoring, and Success Criteria for the Solana Hills Mitigation Site
for the San Elijo Lagoon Nature Center Project and Planting Plan
Maintenance, Monitoring, and Success Criteria for the San Elijo Lagoon Nature
Center Project On-site Planting Plan
San Elijo Lagoon Nature Center Project On-site Planting Plan

cc: Susan Wynn, c/o U.S. Fish and Wildlife Service, Carlsbad Field Office, 6010
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HLP File